

STATE OF NEW HAMPSHIRE
EXECUTIVE BRANCH ETHICS COMMITTEE



33 Capitol Street
Concord, New Hampshire 03301-6397

Joseph DiBrigida, Jr., Chairman
Dale S. Kuehne
Alan W. Johnson

James A. Normand
Gregory L. Silverman

Advisory Opinion 2016 – 01

Questions Presented

- (1) Can a state employee accept an item such as a faux leather notepad, t-shirt, or tote bag, that is given to each attendee at a work-related conference without violating the prohibition on gifts under RSA 15-B?
- (2) Can a state employee accept a \$100 gift certificate to a restaurant that she won as a raffle prize at a work-related conference paid for by the employer that was open to public and private sector employees, where each conference attendee was given a raffle ticket as part of the registration materials?

Summary Answer

- (1) Yes, acceptance would be permissible. If the cost of the item was included in the registration fee, then it is not a gift. Even if it was not, the value of the item is likely insignificant, and thus not considered a gift.
- (2) Under the circumstances described, the committee finds that prohibiting acceptance of the prize would not advance the purpose of the gift prohibition because it is awarded randomly and cannot be targeted to a specific person or group of people. However, the recipient of the prize must evaluate whether acceptance of the prize would create a conflict based on his or her position in relation to the entity or person donating the prize.

Legal Authority

RSA 15-B:1; RSA 15-B:2; RSA 15-B:3, III; RSA 21-G:21 II

Analysis

RSA 15-B:3, III states that “[n]o elected official, public official, public employee, constitutional official, or legislative employee shall knowingly accept, directly or indirectly, any gift as defined in this chapter.” The term “gift” is defined in RSA 15-B:2, V(a):

- (1) Money in any amount, whether in the form of cash, check, or any other negotiable or non-negotiable instrumentality for the transfer of money;
- (2) Any other tangible thing, intangible thing, service, or the use thereof, having more than insignificant economic value. Any such item with a value of less than \$25 is presumed to be of insignificant value.

RSA 15-B:2, V(b) lists thirteen exceptions to this broad definition of the term gift. If the transaction or item does not fall within one of those exceptions then it is a gift and the prohibition against the acceptance of gifts would apply.

The purpose of the prohibition against acceptance of gifts “is to ensure that the performance of official duties does not give rise to a conflict of interest” and shall be liberally construed to effect that purpose. RSA 15-B:1.

With respect to the first question, as an initial matter, it is likely that the cost of the item was covered by the registration fee and therefor would not constitute a “gift” as that term is commonly understood, because it was paid for. *See* Merriam-Webster Online Dictionary (defining “gift” as “something voluntarily transferred by one person to another without compensation.”). However, even if the cost was not covered by the registration fee, the tote bag, t-shirt, or faux leather notebook would not constitute a gift. The value of any one of those items would be insignificant and therefore not a gift. RSA 15-B:2, V(a)(2).

Turning to the second question regarding the raffle prize, the \$100 gift certificate is an instrumentality for the transfer of money and thus falls within the definition of gift under RSA 15-B:2, V(a)(1). However, because it was given as raffle prize, it is our opinion that, under the circumstances, acceptance of the prize would not constitute a violation of the ethics statute.

Our analysis starts with the purpose of the gift prohibition—to avoid conflicts of interest. In other words, in this context, the inquiry is whether the receipt of the raffle prize would predispose the recipient to a sense of obligation or favoritism towards the entity awarding the prize, in violation of the public trust, or could the giving of the prize be viewed as an attempt to curry favor improperly with a state regulator.

This committee has previously recognized that “the prohibition on gifts is a restriction on gifts to a specific individual or to a discreet group of individuals.” Opinion 2007-010. More specifically, it is a restriction on gifts to individuals working or volunteering for the State of New Hampshire. *See* RSA 15-B:3, III. Because a raffle prize is awarded based on a random drawing, it cannot be targeted to a specific individual. And, in this particular circumstance, because the conference attendees are drawn from both the private and public sector, the person or entity providing the prize has no ability to target a discreet group of State of New Hampshire employees in an effort

to curry favor. The purpose of the prohibition on gifts is satisfied. It is our opinion that prohibiting acceptance of the \$100 gift certificate, although technically "a gift" under the statute, would not serve the purpose of the statute. Accordingly we conclude that under the specific circumstances presented, acceptance of the raffle prize would not violate the gift statute.

There are a number of factors that might alter the Committee's analysis. For example, if the raffle was only open to those who purchased a ticket, then the prize would not be considered a gift as the winner paid consideration for the chance to win. See *Legislative Advisory Opinion 2010-1* (raffle prize for which recipient paid consideration did not constitute a gift). On the other hand, certain factors would weigh towards a finding that the prize constituted a gift. One such factor would be the make-up of the conference audience. For example, if the conference was restricted to state employees who have regulatory or enforcement authority, there is a heightened danger that a prize is being targeted to a discreet group of individuals. Another factor is the identity of person or entity providing the prize; whether that person or entity is subject to state regulation, permitting, or other oversight. If so, and member of the regulatory agency may be a part of the audience, that raises the potential for a conflict of interest to arise. Stated another way, if the purpose of the prize was to influence or curry favor with a government regulator, the person or entity providing the prize would be far more likely to do so if it was known that the universe of potential recipients was exclusively the desired government regulators, as opposed to a diverse group of individuals.

As with all circumstances implicating the gift statute, a state employee who wins a raffle prize at a work-related conference should perform his or her own conflict of interest analysis. The person should evaluate whether, in light of that employee's duties relative to the person or entity offering the prize, receipt of the prize would have "the potential to cause a private interest to interfere with the proper exercise of a public duty." RSA 21-G:21, II. For example, a State employee who has regulatory enforcement authority over the business entity that provided the prize should not accept a raffle prize from that business.

Additionally, if the prize winner experiences discomfort about the public perception of his or her acceptance of the prize, the better practice, although not required by law, would be to decline the prize and avoid any potential conflict.

Finally, because state agencies are authorized to adopt ethics and gift policies that are more restrictive than those set out in statute, the employee should familiarize him or herself with the policies of the agency where he or she is employed.

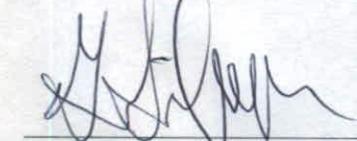
This Advisory Opinion is issued by the Executive Branch Ethics Committee on September 7, 2016 pursuant to RSA 21-G:30-a.



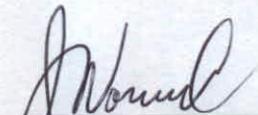
Joseph DiBrigida Jr., Chair



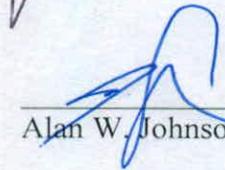
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